IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

LA.App..No. 1213 of 2003()

LAR.201/2000 of PRL.SUB COURT, KOZHIKODE
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APPELLANT: RESPONDENT

STATE OF KERALA

BY GOVERNMENT PLEADER SHRI K.V. MANOJKUMAR

RESPONDENTS: RESPONDENT

KUNDOOR SUBRAMANNIAN, MALAPARAMBU,
CALICUT.

BY ADV. SRI.P.M.MOHAMMED SHIRAZ
SMT.K.C.BEENA (KOORAN)

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 03/07/2007, ALONG WITH LAA NO. 1292 OF 2003 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Kurian Joseph & T.R. Ramachandran Nair, JJ.

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L.A.A..NOs.1213 & 1292 of 2003

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Dated this the 3rd day of July, 2007

JUDGMENT

T.R. Ramachandran Nair, J.

These appeals are filed by the State of Kerala challenging the common judgment and decree in L.A.R. Nos.201/2000 & 202/2000 of the Subordinate Judge's Court, Kozhikode. The acquisition was for the purpose of formation of National Highway Bye pass. In L.A.R. No.201/2000, the area acquired is 0.0332 hectares (8.20 cents) and in L.A.R. No.202/2000, the area acquired is 0.003 hectares (0.839 cents). The notification under Section 4(1) was published on 23.5.1998 and award was passed on 4.8.1999. The Land Acquisition Officer awarded land value at the rate of Rs.16,339/- per cent. The claimants, being dissatisfied with the award, sought for reference for determination of enhanced compensation by the court below. The land value was claimed at the rate of Rs.2.5 lakhs per cent. The court below has tried both cases together and a common judgment has been rendered.

2. The documents in this case consists of Exts.A1 to A4, Ext.C1 Commission Report and Ext.C2 plan. P.W.1 has been examined in support

of the claim.

3. The court below has enhanced the market value by fixing it at Rs.1,25,000/- per cent. This is under challenge in these appeals.

4. Learned Govt. Pleader contended that the properties covered by Exts.A1 and A2 are not similar or similarly situated as that of the acquired land. The vendor and vendee have not been examined also. It was also pointed out that the report of the Commissioner ought not have been accepted.

5. The court below found that the basic land is not similar and similarly situated with the acquired land and the acquired lands are more valuable than the basic land. The court below granted enhancement on the basis of the report of the Commissioner. It is stated that the centage value of the acquired land as Rs.1,25,000/- is proper and reasonable.

6. The report of the Commissioner shows that the acquired lands are situated on the northern side of Calicut - Wayanad Road. They are situated adjacent to the present National Highway 212 and are lying 20 metres away from Malaparamba junction. The acquired properties are garden lands. These properties are lying within 200 metres of Civil Station at Kozhikode, educational institutions like Providence College, Medical College, Homoeo College, Devagiri College, Poly Technic and Schools. There are various

Government offices like Office of the Water Authority, Telephone Department and the District Collectorate. It is within 5 kms. Of the premises of the court also. The report of the Commissioner also shows that the basic land is lying away at a distance of 300 metres from the acquired properties and lying on the eastern side of Malamparamba - Florican road. The property is behind a house plot and there is no direct motorable access also. It is lying at a lower level than the main road also.

7. But the court below has fixed the enhanced compensation simply based on the opinion of the Commissioner in Ext.C1. The Commissioner was of the opinion that going by local enquiry, the market value of the property is Rs.1,50,000/-. It is not based on any acceptable material also. Therefore, the enhancement granted simply based on assessment contained in the report of the Commissioner is not correct.

8. Learned counsel for the respondent submitted that the court below went wrong in not considering Ext.A1. It was contended that his claim for enhancement can be accepted on the basis of it, and the value awarded by the court below can be confirmed also.

9. Ext.A1 is the certified copy of sale deed No.2824/1997 of S.R.O., Kakkodi. The property was purchased by one Rajan, the Secretary, Government Employees Co-operative Society, Koyilandy for a

consideration of Rs.92,500/- per cent. The same is also a garden land situated 1 km. interior from the acquired properties. The property is near to the Civil Station and about 15 metres away from the National Highway 212. It lies on the western side of the acquired property and it is having road access from the National Highway by way of 8 ft. road. The sale deed is dated 25.9.1997, proximate in time to the notification under Section 4(1) which was published on 23.5.1998. In fact, the court below even though has discussed about the same, it was not accepted. But according to us, the circumstances reported by the Commissioner shows that the acquired land is similar to that of the properties covered by Ext.A1. The location and importance are similar and the type of property is also garden land. Hence, even though the vendor and the vendee were not examined, in view of the evidence of P.W.1 and in view of the details furnished in the report of the Commissioner, we are of the view that Ext.A1 can be safely relied on for the purpose of fixing enhanced land value. In Ext.A1, the land value is Rs.92,500/- per cent. Ext.A1 is executed on 25-9-1997, whereas the Section 4(1) notification is dated 23-5-1998. Taking into consideration the escalation in land value we are of the view that it will be just, proper and reasonable to fix the land value at Rs.95,000/- in view of the importance of the locality in which the acquired property is situated, being on the side of

the National Highway and also due to the fact that there are several important public institutions within its vicinity and also for the reason that it is near the Malamparamba Junction and is a place within the Calicut Corporation.

Therefore,the appeals are allowed in part and in modification of the judgment and decree passed by the court below, we fix the land value at Rs.95,000/- per cent. The claimants will also be entitled for all the statutory benefits.

The appeals are disposed of as above. No costs.

(Kurian Joseph, Judge.)

(T.R. Ramachandran Nair, Judge.)

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